

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANN MARIE BORGES, *et al.*,
Plaintiffs,
v.
COUNTY OF MENDOCINO, *et al.*,
Defendants.

Case No. [20-cv-04537-SI](#)

**ORDER DISMISSING DEFENDANTS
JOHN MCCOWEN, GEORGEANN
CROSKEY AND CARRE BROWN
WITHOUT PREJUDICE**

Re: Dkt. No. 61

Defendants have filed a motion for judgment on the pleadings, and that motion is scheduled for a hearing on July 9, 2021. Pursuant to Civil Local Rule 7-1(b), the Court determines that the matter is appropriate for resolution without oral argument and VACATES the hearing.

Defendants John McCowen, Carre Brown, and Georgeanne Croskey assert that they have been sued in their official capacities, and thus that plaintiffs' claims against them should be dismissed with prejudice because the official capacity claims are redundant of plaintiffs' claims against the County of Mendocino. *See Center for Bio-Ethical Reform, Inc. v. Los Angeles County Sheriff Dep't*, 533 F.3d 780, 799 (9th Cir. 2008) ("When both a municipal officer and a local government entity are named, and the officer is named only in an official capacity, the court may dismiss the officer as a redundant defendant.").

Plaintiffs state that they do not oppose dismissal of defendants McCowen, Brown and Croskey without prejudice. However, plaintiffs state that the first amended complaint was silent on whether those defendants were sued in their official or individual capacities. Plaintiffs wish to reserve their right to amend the complaint to sue these defendants in their individual capacities if plaintiffs uncover evidence that defendants engaged in a conspiracy. "Unlike an official capacity claim, where the constitutional injury 'must be attributable to [an] official policy or custom,' an

1 individual capacity claim ‘hinges upon [the individual defendant’s] participation in the deprivation
2 of constitutional rights.’” *Torres v. Goddard*, 793 F.3d 1046, 1057 (9th Cir. 2015) (internal citation
3 omitted).

4 The Court finds it appropriate to DISMISS plaintiffs’ claims against defendants McCowen,
5 Brown, and Croskey without prejudice to plaintiffs later seeking to allege individual capacity claims
6 against these defendants.

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8 **IT IS SO ORDERED.**

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10 Dated: June 22, 2021



SUSAN ILLSTON
United States District Judge